COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

	)	
Bay State Gas Company	)	
Forecast and Supply Plan, 2002-2007	)	**D.T.E. 02-75**
	)	

INITIAL BRIEF
OF THE ATTORNEY GENERAL

Respectfully submitted,

TOM REILLY
ATTORNEY GENERAL

By: Edward G. Bohlen
Wilner Borgella, Jr.
Assistant Attorneys General
Utilities Division
200 Portland Street
Boston, MA 02114
(617) 727-2200

July 2, 2003

TABLE OF CONTENTS

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Bay State Gas Company Forecast and Supply Plan, 2002-2007	))))	D.T.E. 02-75

INITIAL BRIEF
OF THE ATTORNEY GENERAL

I. SUMMARY

Bay State Gas Company ("Bay State" or the "Company") seeks approval from the Department of Telecommunications and Energy ("Department") of its proposed long-range forecast and supply plan ("Plan") for the period 2002/03 through 2006/07. The Attorney General here addresses a single issue – Bay State's proposal to create a contingency reserve ("Contingency Reserve") to supply natural gas to customers returning from competitive service.[1] Exhibit BSG-1, p. 2. Bay State does not show the proposed Contingency Reserve in its Plan, but would develop it only after the Department approved the creation of a reserve.

The Department should reject Bay State's proposed Contingency Reserve because it is unfair to existing sales customers and contrary to Department precedents regarding cross-subsidization. The Department also should open an investigation to develop a comprehensive plan for retail natural gas competition in Massachusetts.

II. BACKGROUND

In 1996, the Department approved a pilot program for Bay State to open natural gas supply competition to all customer classes. Exhibit BSG-1, pp. 7-11. In 1997, the Department

[1] The Department should not interpret the Attorney General's silence on any issue raised in this case as agreement with a position espoused by any other party.

directed the Massachusetts natural gas local distribution companies ("LDCs") to participate in opening the retail natural gas commodity market to competition. Since 1997, this market has transformed from highly regulated to one with little commodity price regulation. In 1998, the Department announced a five year transition period to retail competition. The Department opened the competitive gas supply market for all customers of Massachusetts LDCs effective November 2000.[2] Large commercial and industrial customers now purchase gas competitively rather than from the LDC.

As part of opening the retail market to competition, the Department required competitive suppliers to pay the costs of that portion of the LDC's capacity needed to supply their customers. *Inquiry into unbundling of all natural gas local distribution companies' services*, D.T.E.98-32-B (1999). The Department stated that to do otherwise would not be consistent with the LDCs' obligation to provide reliable and least cost service and to avoid improper shifting of costs among customers. *Id*. The Department accepted a settlement exempting certain customers from the mandatory capacity assignment, "grandfathering" customers that were receiving gas supply services from competitive suppliers before open competition was initiated. *Inquiry into unbundling of all natural gas local distribution companies' services*, DTE 98-32-C. Generally, the grandfathered customers are large C&I customers with higher than average use.[3]

[2] The Department, however, ordered the LDCs to continue to plan and procure capacity resources necessary to provide reliable service for at least the first three years. *Inquiry into unbundling of all natural gas local distribution companies' services*, DTE 98-32-B, pp. 58-60 (1999).

[3] From 1996 through 2000, Bay State operated a pilot program that allowed all customer classes to choose a competitive supplier, without mandatory assignment of capacity. Tr. p. 99. According to the Company, there are over 3,000 grandfathered Bay State customers. All customer classes are represented, including five residential heating customers (who constitute only 0.15% of the total). AG-RR-1.

Grandfathered customers have benefitted from lower gas costs since the late 1980's, when the Department required LDCs to file transportation rates for large customers.

In this docket, the Company proposes a ten percent Contingency Reserve to enable it to serve, under design weather conditions, customers that return from competitive supply service to the Company's sales service.[4] These customers, who migrated to competitive service before mandatory capacity assignment in November 2000, may have benefitted more through competitive gas procurement than other competitively served customers that have been assigned capacity. The Company stated that the proposed Contingency Reserve would increase the Company's portfolio costs by approximately one percent based on market conditions existing at the time of the Company's filing. Exhibit BSG-1, pp. 43-44. The Company acknowledges the inequity inherent in charging only the CGA customers, who do not purchase gas from a competitive supplier and therefore are not responsible for causing the Company to request approval of the Contingency Reserve. *Id*.

III. ARGUMENT

A. TO SHIFT RESERVE COSTS FROM RETURNING CUSTOMERS TO CGA CUSTOMERS WOULD BE UNFAIR AND CONTRARY TO DEPARTMENT PRECEDENT.

Fairness has long been one of the Department's basic rate design goals. *Boston Edison Company*, D.P.U. 1720, pp. 112-113 (1984); *Bay State Gas Company*, D.P.U. 92-111, p. 283

---

[4] The proposed Contingency Reserve is 51,000 decatherms, 10 percent of the Company's design day requirement. Tr., p.124. The Company's design day is based on a 1 in 25 year planning standard previously approved by the Department. Tr., pp. 55 and 124. The Company proposes to use its own LNG and propane assets to meet the proposed reserve requirement. Exh. BSG-1, p. 43 and Tr., pp. 71-72. According to the Company, the 10 percent reserve would serve multiple purposes: providing a contingency reserve for pressure support and emergency source of gas, as well as a cushion to serve a portion of the total design day load of grandfathered customers. Exh. BSG-1, p. 43 and Tr., p.10 .

(1992). The Department has explained that: "fairness means that ... the rate structure should require no class of consumers to pay more than the costs of serving that class." *Id.* The Department has stated consistently that "cost responsibility must follow cost incurrence" and "the Department's goal is to move the gas industry to a competitive market without cost shifting." *Inquiry into unbundling of all natural gas local distribution companies' services*, DTE 98-32-B, pp. 26 and 31 (1999); *see also Inquiry into unbundling of all natural gas local distribution companies' services*, DTE 98-32-D, pp. 5-6. The Department added, "[o]ur intent is ... to ensure that: (1) customers in general are not made worse off by the transition to a workably competitive capacity market and (2) the transition is orderly, expeditious and minimizes customer confusion." *Inquiry into unbundling of all natural gas local distribution companies' services*, DTE 98-32-B, p. 9 (1999). The Department also stated that:

> We will not attempt to create a competitive market, if the competitive market cannot develop and exist on its own or would artificially benefit only a narrow group of actors at the expense of others. In order to achieve this goal, we must ensure: (1) that all customers in the Commonwealth will continue to receive reliable service; and (2) that customers will be required to pay only for those costs that the LDC incurred in order to serve them."

Id. pp. 25-26. The Company has cited no precedent for reserving capacity to serve returning customers.

The Company's 10 percent Contingency Reserve proposal would burden customers who have never benefitted from competition by charging them for capacity necessary to serve the customers who have long enjoyed the monetary benefits of competition. It would shift costs from the grandfathered customers who left for competitive supply to those who have paid all along for the capacity the Company has acquired to serve them now and into the future. The

Department should deny the Company's request for a 10 percent Contingency Reserve because it would be unfair to existing default service customers and contrary to the Department's guidelines for the transition to a competitive market. *Inquiry into unbundling of all natural gas local distribution companies' services*, DTE 98-32-B (1999).

B. TERMS AND CONDITIONS PERMIT THE DEPARTMENT REJECTION OF RETURNING CUSTOMERS.

The terms and conditions approved by the Department permit an LDC to reject customers that return without the capacity needed to serve them.[5] *See* DTE 98-32-D (2000) (Section 15.3, Model Terms and Conditions). Those Terms and Conditions state that the Company will provide default service to any returning customer up to the level of recallable capacity assigned to the customer's former supplier. Exh. AG-1-1, AG-1-3, Tr. pp. 129-130, DTE-RR-23. The Department should order the Company to follow that provision in the Terms and Conditions.

C. THE DEPARTMENT COULD ORDER A SEPARATE CGA FOR RETURNING GRANDFATHERED CUSTOMERS, AS IT HAS DONE FOR ELECTRIC SUPPLY.

As an alternative to the Company's proposed cost shifting, the Department could create a separate CGA applicable to returning grandfathered customers. Under such a separate CGA, the Company would charge the returning grandfathered customers for the actual costs to serve them. This alternative would be similar to the Electricity Default Service rules for larger commercial customers the Department is currently implementing in docket DTE 02-40.[6] A separate CGA

---

[5] Bay State's Terms and Conditions tariff.

[6] Electric distribution companies in Massachusetts procure electricity for default service for residential and small commercial customers separately from the larger commercial and industrial customers' default service supply. Those companies also apply different pricing rules; small customers are automatically assigned to fixed pricing, while larger customers are automatically assigned to variable monthly pricing.

would produce a fairer result and would be more consistent with Department ratemaking principles and competitive transition guidelines than the Company's proposal.

D. The Department Should Open a Proceeding to Develop a Comprehensive Plan For Retail Natural Gas Competition In Massachusetts.

The competitive energy market has not developed as the Department originally envisioned. Both the gas and electricity wholesale markets are in turmoil and the prices paid by retail customers are extremely volatile. While many of the events causing the current instability are beyond the control of the LDCs and the Department, that does not mean that the Department should take no action. After several years in transition, it is time for the Department to initiate a review of the status of competition the retail natural gas market here in Massachusetts, as contemplated in DTE 98-32-B. The Department should develop comprehensive guidelines for resource and supply planning. These guidelines should enhance the choices available to customers, so that the choices fit customers' needs and are tailored to the current realities of competition in the Massachusetts natural gas market.

IV. CONCLUSION

The Department should reject Bay State's Contingency Reserve proposal and open an investigation to develop a comprehensive plan for retail natural gas competition in

Massachusetts.

Respectfully submitted,

TOM REILLY
ATTORNEY GENERAL

By: ________________________

Edward G. Bohlen
Wilner Borgella, Jr.
Assistant Attorneys General
Utilities Division
200 Portland Street
Boston, MA 02114
(617) 727-2200

July 2, 2003